

# HOUSE BILL No. 1604

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-6-2-6; IC 35-46-1.

**Synopsis:** Tobacco product enforcement. Removes the requirement that specified amounts of the money in the youth tobacco education and enforcement fund be used for specified purposes. Amends the definition of "distribute" for purposes of the youth tobacco laws. Allows the Indiana alcoholic beverage commission to retain an attorney to collect civil penalties relating to the sale, distribution, and possession of tobacco products by minors that have been assessed but that have not been paid. Allows the Indiana alcoholic beverage commission to provide alternative words for notices that are required to be posted on vending machines and retail establishments that sell tobacco.

**Effective:** July 1, 2001.

**Hasler**

January 17, 2001, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1604

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 7.1-6-2-6, AS ADDED BY P.L.177-1999,  
2       SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2001]: Sec. 6. (a) The youth tobacco education and  
4       enforcement fund is established. The fund shall be administered by the  
5       commission.

6       (b) Expenses of administering the fund shall be paid from money in  
7       the fund.

8       (c) The treasurer of state shall invest the money in the fund not  
9       currently needed to meet the obligations of the fund in the same  
10      manner as other public money may be invested.

11      (d) Money in the fund at the end of a state fiscal year does not revert  
12      to the state general fund.

13      (e) Money in the fund shall be used for the following purposes:

14          (1) ~~One-third (1/3) of the money in the fund~~ for Youth smoking  
15          prevention education. The commission may contract with the state  
16          department of health or the office of the secretary of family and  
17          social services for youth smoking prevention education programs.



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(2) ~~One-third (1/3) of the money in the fund for~~ Education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health, enforcement officers, or a program approved by the commission.

(3) ~~One-third (1/3) of the money in the fund to~~ For the commission for enforcement of youth tobacco laws.

SECTION 2. IC 35-46-1-10, AS AMENDED BY P.L.177-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) A person who knowingly sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person. ~~as a means of promoting, advertising, or marketing the tobacco to the general public.~~

(f) Unless a person buys or receives tobacco under the direction of

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a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

**(h) If a person is assessed a civil penalty for violating this section and fails to pay the penalty within thirty (30) days after final judgment, the Indiana alcoholic beverage commission may retain an attorney to collect the penalty along with costs and reasonable attorney's fees.**

SECTION 3. IC 35-46-1-10.2, AS AMENDED BY P.L.14-2000, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

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(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person. ~~as a means of promoting, advertising, or marketing the tobacco to the general public.~~

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

**(h) If a retail establishment is assessed a civil penalty for violating this section and fails to pay the penalty within thirty (30) days after final judgment, the Indiana alcoholic beverage commission may retain an attorney to collect the penalty along with costs and reasonable attorney's fees.**

SECTION 4. IC 35-46-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10.5. (a) A person less than eighteen (18) years of age who:

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1 (1) purchases tobacco;  
 2 (2) accepts tobacco for personal use; or  
 3 (3) possesses tobacco on his person;  
 4 commits a Class C infraction.

5 (b) It is a defense under subsection (a) that the accused person acted  
 6 in the ordinary course of employment in a business concerning tobacco:

- 7 (1) agriculture;  
 8 (2) processing;  
 9 (3) transporting;  
 10 (4) wholesaling; or  
 11 (5) retailing.

12 **(c) If a person is assessed a civil penalty for violating this section**  
 13 **and fails to pay the penalty within thirty (30) days after final**  
 14 **judgment, the Indiana alcoholic beverage commission may retain**  
 15 **an attorney to collect the penalty along with costs and reasonable**  
 16 **attorney's fees.**

17 SECTION 5. IC 35-46-1-11 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) A tobacco  
 19 vending machine that is located in a public place must bear a  
 20 conspicuous notice reading as follows, with the capitalization  
 21 indicated: "If you are under 18 years of age, YOU ARE FORBIDDEN  
 22 by Indiana law to buy tobacco from this machine."

23 (b) A person who owns or has control over a tobacco vending  
 24 machine in a public place and who:

- 25 (1) fails to post the notice required by subsection (a) on his  
 26 vending machine; or  
 27 (2) fails to replace the notice within one (1) month after it is  
 28 removed or defaced;

29 commits a Class C infraction.

30 (c) An establishment selling tobacco at retail shall post and maintain  
 31 in a conspicuous place a sign, printed in letters at least one-half (1/2)  
 32 inch high, reading as follows: "The sale of tobacco to persons under 18  
 33 years of age is forbidden by Indiana law."

34 (d) A person who:

- 35 (1) owns or has control over an establishment selling tobacco at  
 36 retail; and  
 37 (2) fails to post and maintain the sign required by subsection (c);

38 commits a Class C infraction.

39 **(e) Notwithstanding subsections (a) and (c), the Indiana**  
 40 **alcoholic beverage commission may adopt rules under IC 4-22-2 to**  
 41 **provide alternative words for notices required by subsections (a)**  
 42 **and (c).**



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